

EN BANC

[G.R. No. 196201, June 19, 2012]

**FRANCISCO T. DUQUE III, IN HIS CAPACITY AS CHAIRMAN OF
THE CIVIL SERVICE COMMISSION, PETITIONER, VS.
FLORENTINO VELOSO, RESPONDENT.**

D E C I S I O N

BRION, J.:

We review the petition filed under Rule 45 of the Rules of Court by petitioner Francisco T. Duque III, in his capacity as Chairman of the Civil Service Commission (CSC), assailing the decision^[1] and the resolution^[2] issued by the Court of Appeals (CA)^[3] in CA-G.R. SP No. 01682-MIN. The CA modified CSC Resolution No. 061714,^[4] finding Florentino Veloso (*respondent*) guilty of dishonesty, by reducing the penalty imposed by the CSC from dismissal from the service to suspension from office for one year without pay.

The Facts

The records show that the respondent, then District Supervisor of Quedan and Rural Credit Guarantee Corporation (*Quedancor*), Cagayan de Oro City, was administratively charged with three (3) counts of dishonesty in connection with his unauthorized withdrawals of money deposited by Juanito Quino (*complainant*), a client of Quedancor. The complainant applied for a restructuring of his loan with Quedancor and deposited the amount of P50,000.00 to Quedancor's cashier for his Manila account. In three (3) separate occasions, the respondent, without notice and authority from the complainant and with the assistance of Quedancor's cashier, managed to withdraw the P50,000.00 deposit. Upon the discovery of the withdrawals, the complainant demanded the return of the money and called the attention of the manager of Quedancor in Cagayan de Oro City, who issued to the respondent a memorandum requiring him to explain the withdrawals and to return the money.

In compliance with the memorandum, the respondent returned the money. The respondent admitted having received the P50,000.00 from Quedancor's cashier knowing that it was intended for the complainant's loan repayment.

From the established facts, the respondent was charged by Quedancor with dishonesty, and was subsequently found guilty of the charges and dismissed from the service. The CSC affirmed the findings and conclusions of Quedancor on appeal.

Dissatisfied with the adverse rulings of Quedancor and the CSC, the respondent elevated his case to the CA which adjudged him guilty of dishonesty, but modified the penalty of dismissal to one (1) year suspension from office without pay. The CA cited the case of *Miel v. Malindog*^[5] as supporting basis and relied on Section 53,

Rule IV of the Uniform Rules on Administrative Cases (Uniform Rules) which allows the appreciation of mitigating circumstances in the determination of the proper imposable penalty. The CA took into account the following mitigating circumstances: (1) the respondent's length of service of 18 years; (2) the prompt admission of culpability; (3) the return of the money; and (4) the respondent's status as a first time offender.

The Present Petition

The CSC argues that the CA disregarded the applicable law and jurisprudence which penalize the offense of dishonesty with dismissal from the service. The CSC also argues that there are no mitigating circumstances to warrant a reduction of the penalty, for the following reasons:

- (1) The respondent's length of service aggravated his dishonesty since the respondent took advantage of his authority over a subordinate and disregarded his oath that a public office is a public trust. The respondent's length of service cannot also be considered mitigating given the number of times the dishonest acts were committed and the supervisory position held by the respondent.
- (2) The admission of guilt and the restitution by the respondent were made in 2003, while the misappropriation took place in 2001. The respondent admitted his culpability and effected payment not because of his desire to right a wrong but because he feared possible administrative liabilities.
- (3) The respondent was charged with, and admitted having committed, dishonesty in three separate occasions.
- (4) Section 52(A)(1), Rule IV of the Uniform Rules imposes dismissal from the service for dishonesty, even for the first offense.

In compliance with our Minute Resolution dated May 31, 2011, the respondent filed his comment to the petition. The respondent begs the Court to apply jurisprudence where the Court, for humanitarian reasons, refrained from meting out the actual penalties imposed by law, in the presence of mitigating circumstances. In this case, the respondent calls attention to the following circumstances: (1) that he is the sole breadwinner of his family; (2) his length of service with Quedancor; and (3) other than this case, no other administrative case had been filed against him for his past 21 years of government service.^[6]

The Issue

The issue in this case is the determination of the proper administrative penalty to be imposed on the respondent.

The Court's Ruling

We grant the petition.

Dismissal from the service is the prescribed penalty imposed by Section 52(A)(1), Rule IV of the Uniform Rules for the commission of dishonesty even as a first

offense. The aforesaid rule underscores the constitutional principle that public office is a public trust and only those who can live up to such exacting standard deserve the honor of continuing in public service.^[7] It is true that Section 53, Rule IV of the Uniform Rules provides the application of mitigating, aggravating or alternative circumstances in the imposition of administrative penalties. Section 53, Rule IV applies only when clear proof is shown, using the specific standards set by law and jurisprudence, that the facts in a given case justify the mitigation of the prescribed penalty.

In appreciating the presence of mitigating, aggravating or alternative circumstances to a given case, two constitutional principles come into play which the Court is tasked to balance. The first is public accountability which requires the Court to consider the improvement of public service, and the preservation of the public's faith and confidence in the government by ensuring that only individuals who possess good moral character, integrity and competence are employed in the government service.^[8] The second relates to social justice which gives the Court the discretionary leeway to lessen the harsh effects of the wrongdoing committed by an offender for equitable and humanitarian considerations.

A significant aspect which the CA failed to consider under the circumstances is the inapplicability to the present case of the Court's ruling in *Vicente A. Miel v. Jesus A. Malindog*,^[9] which in turn cited *Apuyan, Jr. v. Sta. Isabel*^[10] and *Civil Service Commission v. Belagan*.^[11] The rulings in these three (3) cases were rendered under different factual circumstances involving dishonest acts, *i.e.*, submission of false entries in the Personal Data Sheet, the solicitation of money, or the non-compliance with the prescribed court procedure, among others. In terms of seriousness and gravity, these dishonest acts differ from the dishonest acts committed by the respondent **who used public funds under his responsibility for his own personal benefit**. Unlike the cases cited by the CA, we also take into account the nature of Quedancor's business – it is a credit and guarantee institution where the public perception of the official's credibility and reputation is material.

In the clearest of terms, the CA upheld that factual findings of the CSC. Thus, it is on the basis of these findings that we must now make our own independent appreciation of the circumstances cited by the respondent and appreciated by the CA as mitigating circumstances. After a careful review of the records and jurisprudence, we disagree with the CA's conclusion that mitigating circumstances warrant the mitigation of the prescribed penalty imposed against the respondent.

First, we have repeatedly held that length of service can either be a mitigating or an aggravating circumstance depending on the facts of each case.^[12] While in most cases, length of service is considered in favor of the respondent, it is not considered where the offense committed is found to be serious or grave,^[13] or when the length of service helped the offender commit the infraction.^[14] The factors against mitigation are present in this case.

Under the circumstances, the administrative offense of dishonesty committed by the respondent was serious on account of the supervisory position he held at Quedancor and the nature of Quedancor's business. Quedancor deals with the administration, management and disposition of public funds which the respondent was entrusted to